IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 3977 of 2007(W)

PETITIONER:

M/S.XEROX INDIA LTD.,
(MODI XEROX LTD), 36/1951, 1ST FLOOR,
KALOOR TOWERS, ELAMULAM ROAD, KALOOR,
KOCHI-682 017, ERNAKULAM DISTRICT,
REP.BY ITS MANAGER CA, P.VISWANATHAN.

BY ADV. SRI.A.KUMAR

RESPONDENTS:
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1. DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM, KERALA.

2. THE ASSISTANT COMMISSIONER IV,
KVAT SPECIAL CIRCLE III, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.3977 OF 2007-W

Judgment

The petitioner is aggrieved by Ext.P4 assessment order, to the extent, it demands penal interest @ 24%. So, it has preferred Ext.P5 revision and also Ext.P6 stay application before the Commissioner for Commercial Taxes , seeking stay of collection of interest till the disposal of the representation. The revisional authority considered the stay application and passed Ext.P7 order, by which, the petitioner has been directed to pay 50% of the interest demanded and furnish security for the balance amount. This Writ Petition is filed, challenging Ext.P7. The learned counsel for the petitioner submits that the demand of interest from 01.04.1999 is irrational. By the decision of the first appellate authority, the very basis of the assessment has been unsettled and a fresh assessment is made based on the ground that the contracts involved are works contracts and the tax is leviable only in relation to the goods transferred while executing the contract. Therefore, the levy of interest can be made only from the date of the revised assessment order.

2. I heard the learned Government Pleader appearing for the respondents also. Prima facie, there is some force in the submission of the petitioner that penal interest may not be leviable from 01.04.1999. But, prima facie, I also feel that the State is entitled to get reasonable interest even if there is delay in assessing and demanding the same. As a result of the interim order to remit 50% tax, approximately interest @ 12% is liable to be paid, pending revision.

Therefore, Ext.P7 order cannot be said to be irrational or perverse, warranting interference with the same under Article 226 of the Constitution of India. It being an interim order, only on limited grounds, this Court can interfere with the same. I find that no ground has been made out to interfere with the said order. In the result, the Writ Petition fails and it is dismissed. It is made clear that I have not expressed any opinion on the merits of the contentions of both sides. If the petitioner moves the appellate authority for extension of time for paying the amount as per the interim order, the said authority will consider and pass orders thereon in accordance with law without delay.

06.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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